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UNITED HEALTHCARE SERVICES, INC. and
UNITEDHEALTHCARE INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BENJAMIN WISE, an individual,
Plaintiff,

vs.

MONTEREY COUNTY
HOSPITALITY ASSOCIATION
HEALTH AND WELFARE PLAN;
UNITED HEALTHCARE
SERVICES, INC.; MONTEREY
COUNTY HOSPITALITY
ASSOCIATION; MVI
ADMINISTRATORS INSURANCE
SOLUTIONS, INC.; MAXIMUS
FEDERAL SERVICES, INC.;
UNITEDHEALTHCARE
INSURANCE COMPANY; AND
DOES 1 THROUGH 10,

Defendants.

CASE NO. 5:18-cv-07454-LHK
District Judge: Hon. Lucy H. Koh

**DEFENDANTS UNITED
HEALTHCARE SERVICES, INC.
AND UNITEDHEALTHCARE
INSURANCE COMPANY'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

Complaint filed: December 11, 2018

Defendants UNITEDHEALTHCARE SERVICES, INC. and
UNITEDHEALTHCARE INSURANCE COMPANY (collectively referred to as

“Defendants”) hereby answer the Complaint of Plaintiff BENJAMIN WISE (“Plaintiff”) filed on December 11, 2018 (“Complaint”).

I. JURISDICTION AND VENUE

1. In responding to Paragraph 1 of the Complaint, Defendants admit that this Court has jurisdiction pursuant to 29 U.S.C. § 1132 and 28 U.S.C. § 1331. Defendants further admit that Plaintiff’s claims arise from an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 1 of the Complaint.

2. In responding to Paragraph 2 of the Complaint, Defendants admit that venue is proper in this District. Defendants further admit that Plaintiff was employed by Eric Miller Architects, who adopted the employee benefit plan at issue. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 2 of the Complaint.

3. In responding to Paragraph 3 of the Complaint, Defendants deny the allegations contained therein.

4. In responding to Paragraph 4 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including Plaintiff’s medical records submitted in support of Plaintiff’s claim, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 4 of the Complaint.

5. In responding to Paragraph 5 of the Complaint, Defendants are informed and believe and based thereon admit that Myomo, Inc. manufactures the MyoPro orthosis. Defendants lack sufficient knowledge to be able to respond to the remaining allegations contained in this paragraph, and on that basis, deny all remaining allegations contained therein.

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6. In responding to Paragraph 6 of the Complaint, Defendants deny the allegations contained therein.

7. In responding to Paragraph 7 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including the basis for denial of benefits, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 7 of the Complaint.

II. THE PARTIES

8. In responding to Paragraph 8 of the Complaint, Defendants are informed and believe and based thereon admit that Plaintiff was and is a resident of Pacific Grove, California. Defendants further admit that Plaintiff was employed by Eric Miller Architects, who adopted the employee benefit plan at issue. Plaintiff's allegations contained in this paragraph reference "at all relevant times" but fail to define that term and do not provide specific dates or time periods in the paragraph. Therefore, Defendants lack sufficient knowledge to be able to respond to the remaining allegations contained in this paragraph, and on that basis, deny all remaining allegations contained therein.

9. In responding to Paragraph 9 of the Complaint, Defendants admit that the employee benefit plan at issue is governed by ERISA. Defendants further admit that the Administrative Record contains the plan documents, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 9 of the Complaint.

10. In responding to Paragraph 10 of the Complaint, Defendants admit that Monterey County Hospitality Association ("MCHA") is a California corporation. Defendants further admit that MCHA is the plan sponsor of the employee benefit plan at issue. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 10 of the Complaint.

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11. In responding to Paragraph 11 of the Complaint, Defendants admit the allegations contained therein.

12. In responding to Paragraph 12 of the Complaint, Defendants admit that MVI Administrators Insurance Solutions, Inc. (“MVI”) is a California corporation based in San Diego, California. Defendants further admit that the Administrative Record contains the plan documents, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 12 of the Complaint.

13. In responding to Paragraph 13 of the Complaint, Defendants admit that Defendant UnitedHealthcare Insurance Company (“UHIC”) is a Connecticut corporation based in Hartford, Connecticut. Defendants further admit that UHIC is the insurer of the health benefit plan at issue. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 13 of the Complaint.

14. In responding to Paragraph 14 of the Complaint, Defendants admit that Defendant United HealthCare Services, Inc. (“UHS”) is a Minnesota corporation based in Minnetonka, Minnesota. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 14 of the Complaint.

15. In responding to Paragraph 15 of the Complaint, Defendants are informed and believe and, based thereon, admit the allegations contained therein.

III. GENERAL ALLEGATIONS

16. In responding to Paragraph 16 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including Plaintiff’s medical records submitted in support of Plaintiff’s claim, which speak for themselves. Defendants lack sufficient knowledge to be able to respond to the

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1 remaining allegations contained in this paragraph and, on that basis, deny all
2 remaining allegations contained therein.

3 17. In responding to Paragraph 17 of the Complaint, Defendants admit
4 that the Administrative Record contains the claim documents, including Plaintiff's
5 medical records submitted in support of Plaintiff's claim, which speak for
6 themselves. Except as expressly admitted, Defendants deny each and every
7 remaining allegation contained in Paragraph 17 of the Complaint.

8 18. In responding to Paragraph 18 of the Complaint, Defendants admit
9 that the Administrative Record contains the claim documents, including Plaintiff's
10 medical records submitted in support of Plaintiff's claim, which speak for
11 themselves. Except as expressly admitted, Defendants deny each and every
12 remaining allegation contained in Paragraph 18 of the Complaint.

13 19. In responding to Paragraph 19 of the Complaint, Defendants admit
14 that the Administrative Record contains the claim documents, including Plaintiff's
15 medical records submitted in support of Plaintiff's claim, which speak for
16 themselves. Defendants lack sufficient knowledge to be able to respond to the
17 remaining allegations contained in this paragraph and, on that basis, deny all
18 remaining allegations contained therein.

19 20. In responding to Paragraph 20 of the Complaint, Defendants admit
20 that the Administrative Record contains the claim documents, including Plaintiff's
21 medical records submitted in support of Plaintiff's claim, which speak for
22 themselves. Defendants lack sufficient knowledge to be able to respond to the
23 remaining allegations contained in this paragraph and, on that basis, deny all
24 remaining allegations contained therein.

25 21. In responding to Paragraph 21 of the Complaint, Defendants admit
26 that the Administrative Record contains the claim documents, including Plaintiff's
27 medical records submitted in support of Plaintiff's claim, which speak for
28

1 themselves. Except as expressly admitted, Defendants deny each and every
2 remaining allegation contained in Paragraph 21 of the Complaint.

3 22. In responding to Paragraph 22 of the Complaint, Defendants admit
4 that the Administrative Record contains the claim documents, including Plaintiff's
5 medical records submitted in support of Plaintiff's claim, which speak for
6 themselves. Except as expressly admitted, Defendants deny each and every
7 remaining allegation contained in Paragraph 22 of the Complaint.

8 23. In responding to Paragraph 23 of the Complaint, Defendants lack
9 sufficient knowledge to be able to respond to the allegations contained in this
10 paragraph, and on that basis, deny all allegations contained therein.

11 24. In responding to Paragraph 24 of the Complaint, Defendants lack
12 sufficient knowledge to be able to respond to the allegations contained in this
13 paragraph and, on that basis, deny all allegations contained therein.

14 25. In responding to Paragraph 25 of the Complaint, Defendants lack
15 sufficient knowledge to be able to respond to the allegations contained in this
16 paragraph and, on that basis, deny all allegations contained therein.

17 26. In responding to Paragraph 26 of the Complaint, Defendants lack
18 sufficient knowledge to be able to respond to the allegations contained in this
19 paragraph and, on that basis, deny all allegations contained therein.

20 27. In responding to Paragraph 27 of the Complaint, Defendants lack
21 sufficient knowledge to be able to respond to the allegations contained in this
22 paragraph and, on that basis, deny all allegations contained therein.

23 28. In responding to Paragraph 28 of the Complaint, Defendants lack
24 sufficient knowledge to be able to respond to the allegations contained in this
25 paragraph and, on that basis, deny all allegations contained therein.

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29. In responding to Paragraph 29 of the Complaint, Defendants lack sufficient knowledge to be able to respond to the allegations contained in this paragraph and, on that basis, deny all allegations contained therein.

30. In responding to Paragraph 30 of the Complaint, Defendants lack sufficient knowledge to be able to respond to the allegations contained in this paragraph and, on that basis, deny all allegations contained therein.

31. In responding to Paragraph 30 of the Complaint, Defendants deny the allegations contained therein.

32. In responding to Paragraph 32 of the Complaint, Defendants lack sufficient knowledge to be able to respond to the allegations contained in this paragraph and, on that basis, deny all allegations contained therein.

33. In responding to Paragraph 33 of the Complaint, Defendants lack sufficient knowledge to be able to respond to the allegations contained in this paragraph and, on that basis, deny all allegations contained therein.

34. In responding to Paragraph 34 of the Complaint, Defendants admit that the employee benefit plan at issue is sponsored by MCHA. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 34 of the Complaint.

35. In responding to Paragraph 35 of the Complaint, Defendants admit that the Administrative Record contains the plan documents, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 35 of the Complaint.

36. In responding to Paragraph 36 of the Complaint, Defendants deny the allegations contained therein.

37. In responding to Paragraph 37 of the Complaint, Defendants admit that the Administrative Record contains the plan documents, which speak for themselves. Except as expressly admitted, Defendants deny each and every

1 remaining allegation contained in Paragraph 37 of the Complaint.

2 38. In responding to Paragraph 38 of the Complaint, Defendants admit
3 that the Administrative Record contains the plan documents, which speak for
4 themselves. Except as expressly admitted, Defendants deny each and every
5 remaining allegation contained in Paragraph 37 of the Complaint.

6 39. In responding to Paragraph 39 of the Complaint, Defendants admit
7 that the Administrative Record contains the plan documents, which speak for
8 themselves. Except as expressly admitted, Defendants deny each and every
9 remaining allegation contained in Paragraph 37 of the Complaint.

10 40. In responding to Paragraph 40 of the Complaint, Defendants admit
11 that the Administrative Record contains the claim documents, including Plaintiff's
12 medical records submitted in support of his claim, which speak for themselves.
13 Except as expressly admitted, Defendants deny each and every remaining
14 allegation contained in Paragraph 40 of the Complaint.

15 41. In responding to Paragraph 41 of the Complaint, Defendants admit
16 that the Administrative Record contains the claim documents submitted in support
17 of Plaintiff's claim, which speak for themselves. Except as expressly admitted,
18 Defendants deny each and every remaining allegation contained in Paragraph 41 of
19 the Complaint.

20 42. In responding to Paragraph 42 of the Complaint, Defendants admit
21 that the Administrative Record contains the claim documents, including the denial
22 of benefits, which speak for themselves. Except as expressly admitted, Defendants
23 deny each and every remaining allegation contained in Paragraph 42 of the
24 Complaint.

25 43. In responding to Paragraph 43 of the Complaint, Defendants admit
26 that the Administrative Record contains the claim documents, including the denial
27 of benefits, which speak for themselves. Except as expressly admitted, Defendants
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1 deny each and every remaining allegation contained in Paragraph 43 of the
2 Complaint.

3 44. In responding to Paragraph 42 of the Complaint, Defendants admit
4 that the Administrative Record contains the claim documents, including appeal
5 documents submitted in support of Plaintiff's claim, which speak for themselves.
6 Except as expressly admitted, Defendants deny each and every remaining
7 allegation contained in Paragraph 44 of the Complaint.

8 45. In responding to Paragraph 45 of the Complaint, Defendants admit
9 that the Administrative Record contains the claim documents, including appeal
10 documents submitted in support of Plaintiff's claim, which speak for themselves.
11 Except as expressly admitted, Defendants deny each and every remaining
12 allegation contained in Paragraph 45 of the Complaint.

13 46. In responding to Paragraph 46 of the Complaint, Defendants admit
14 that the Administrative Record contains the claim documents, including appeal
15 documents submitted in support of Plaintiff's claim, which speak for themselves.
16 Except as expressly admitted, Defendants deny each and every remaining
17 allegation contained in Paragraph 46 of the Complaint.

18 47. In responding to Paragraph 47 of the Complaint, Defendants admit
19 that the Administrative Record contains the claim documents, including appeal
20 documents submitted in support of Plaintiff's claim, which speak for themselves.
21 Except as expressly admitted, Defendants deny each and every remaining
22 allegation contained in Paragraph 47 of the Complaint.

23 48. In responding to Paragraph 48 of the Complaint, Defendants admit
24 that the Administrative Record contains the claim documents, including
25 Defendants response to Plaintiff's appeal, which speaks for itself. Except as
26 expressly admitted, Defendants deny each and every remaining allegation
27 contained in Paragraph 48 of the Complaint.

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49. In responding to Paragraph 49 of the Complaint, Defendants deny the allegations contained therein.

50. In responding to Paragraph 50 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including Defendants response to Plaintiff's appeal, which speaks for itself. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 50 of the Complaint.

51. In responding to Paragraph 51 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including Defendants response to Plaintiff's appeal, which speaks for itself. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 51 of the Complaint.

52. In responding to Paragraph 52 of the Complaint, Defendants are informed and believe and, on that basis, admit that Plaintiff submitted a request for an IMR. Except as expressly admitted, Defendants lack sufficient knowledge to be able to respond to and, on that basis, deny each and every remaining allegation contained in Paragraph 52 of the Complaint.

53. In responding to Paragraph 53 of the Complaint, Defendants lack sufficient knowledge to be able to respond to and, on that basis, deny all allegations contained therein.

54. In responding to Paragraph 54 of the Complaint, Defendants lack sufficient knowledge to be able to respond to and, on that basis, deny all allegations contained therein.

55. In responding to Paragraph 55 of the Complaint, Defendants lack sufficient knowledge to be able to respond to and, on that basis, deny all allegations contained therein.

56. In responding to Paragraph 56 of the Complaint, Defendants lack

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sufficient knowledge to be able to respond to and, on that basis, deny all allegations contained therein.

57. In responding to Paragraph 57 of the Complaint, Defendants lack sufficient knowledge to be able to respond to and, on that basis, deny all allegations contained therein.

58. In responding to Paragraph 58 of the Complaint, Defendants lack sufficient knowledge to be able to respond to and, on that basis, deny all allegations contained therein.

59. In responding to Paragraph 59 of the Complaint, Defendants lack sufficient knowledge to be able to respond to and, on that basis, deny all allegations contained therein.

60. In responding to Paragraph 60 of the Complaint, Defendants admit that the IMR speaks for itself. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 60 of the Complaint.

61. In responding to Paragraph 61 of the Complaint, Defendants admit that the IMR speaks for itself. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 61 of the Complaint.

62. In responding to Paragraph 62 of the Complaint, Defendants lack sufficient information to be able to respond to and, on that basis, deny all allegations contained therein.

63. In responding to Paragraph 63 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including appeal documents submitted in support of Plaintiff's claim, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 63 of the Complaint.

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64. In responding to Paragraph 64 of the Complaint, Defendants admit that Plaintiff's claim for benefits was denied. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 64 of the Complaint.

65. In responding to Paragraph 65 of the Complaint, Defendants are informed and believe and, based thereon, admit the allegations contained therein.

CAUSES OF ACTION

COUNT ONE

(Claim for ERISA Benefits)

66. In responding to Paragraph 66 of the Complaint, Defendants hereby incorporate each and every admission, denial, and allegation contained in its responses to Paragraphs 1 through 65 as though fully set forth herein.

67. In responding to Paragraph 67 of the Complaint, Defendants admit that Plaintiff is seeking benefits under ERISA. Except as expressly admitted, Defendants deny each and every allegation contained in Paragraph 67 of the Complaint.

68. In responding to Paragraph 68 of the Complaint, Defendants admit that Plaintiff was a participant in the employee benefit plan at issue and subject to the terms of the Plan. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 68 of the Complaint.

69. In responding to Paragraph 69 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including the plan documents, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 69 of the Complaint.

70. In responding to Paragraph 70 of the Complaint, Defendants admit that the Administrative Record contains the claim documents, including the plan

documents, which speak for themselves. Except as expressly admitted, Defendants deny each and every remaining allegation contained in Paragraph 70 of the Complaint.

71. In responding to Paragraph 71 of the Complaint, Defendants deny the allegations contained therein.

72. In responding to Paragraph 72 of the Complaint, Defendants deny the allegations contained therein.

73. In responding to Paragraph 73 of the Complaint, Defendants deny the allegations contained therein.

COUNT TWO

(Violation of Fiduciary Duties of Loyalty and Due Care in Violation of ERISA)

74. In responding to Paragraph 74 of the Complaint, Defendants hereby incorporate each and every admission, denial, and allegation contained in its responses to Paragraphs 1 through 73 as though fully set forth herein.

75. In responding to Paragraph 75 of the Complaint, Defendants admit the allegations contained therein.

76. In responding to Paragraph 76 of the Complaint, Defendants deny the allegations contained therein.

77. In responding to Paragraph 77 of the Complaint, Defendants deny the allegations contained therein.

78. In responding to Paragraph 78 of the Complaint, Defendants deny the allegations contained therein.

79. In responding to Paragraph 79 of the Complaint, Defendants deny the allegations contained therein.

80. In responding to Paragraph 80 of the Complaint, Defendants deny the allegations contained therein.

81. In responding to Paragraph 81 of the Complaint, Defendants deny the allegations contained therein.

COUNT THREE

(Denial of Full and Fair Review in Violation of ERISA § 503)

82. In responding to Paragraph 82 of the Complaint, Defendants hereby incorporate each and every admission, denial, and allegation contained in its responses to Paragraphs 1 through 81 as though fully set forth herein.

83. In responding to Paragraph 83 of the Complaint, Defendants deny the allegations as they constitute legal argument rather than factual allegations, thereby requiring no answer. To the extent said statements could be construed as containing factual allegations, Defendants deny each and every allegation contained therein.

84. In responding to Paragraph 84 of the Complaint, Defendants deny the allegations contained therein.

85. In responding to Paragraph 85 of the Complaint, Defendants deny the allegations contained therein.

86. In responding to Paragraph 86 of the Complaint, Defendants deny the allegations contained therein.

87. In responding to Paragraph 87 of the Complaint, Defendants deny the allegations contained therein.

88. Responding to Paragraphs A – L of the Prayer For Relief, Defendants deny Plaintiff's allegations and deny that Plaintiff is entitled to any such relief as set forth therein.

AFFIRMATIVE DEFENSES

Defendants raise the following affirmative defenses to each and every claim asserted against them and as to each of the acts and/or omissions with which Defendants are charged in the Complaint. Defendants hereby allege the following

1 affirmative defenses without assuming the burden of proof for such where the
2 burden is by law upon Plaintiff.

3 **FIRST AFFIRMATIVE DEFENSE**

4 **(Failure to State a Claim for Relief)**

5 1. Defendants allege that the Complaint and each of the claims that are
6 asserted against Defendants fail to set forth facts sufficient to constitute a claim for
7 relief against Defendants.

8 **SECOND AFFIRMATIVE DEFENSE**

9 **(Services Not Covered)**

10 2. Defendants are informed and believe, and on that basis assert, that the
11 benefit claimed by Plaintiff is not covered under benefit plan at issue, and
12 therefore, Plaintiff's claims must be barred.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Reasonable Conduct)**

15 3. Defendants allege that all acts performed by them were performed
16 fairly, in good faith, and for a lawful purpose, and the conduct of Defendants was
17 in compliance with the explicit and implied terms of the benefit plan at issue and
18 their obligations under applicable law.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 **(Proper Investigation)**

21 4. Defendants have a duty to the other members of the benefit plan at
22 issue to investigate Plaintiff's claim and to determine whether it was properly
23 payable under the terms and conditions of the plan. Defendants, in discharging
24 that duty, acted properly at all times herein relevant.

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FIFTH AFFIRMATIVE DEFENSE

(Limited Remedy Under ERISA)

5. Although Defendants deny any liability to Plaintiff, in the event benefits are awarded to Plaintiff, Plaintiff's remedies are limited under ERISA.

SIXTH AFFIRMATIVE DEFENSE

(Benefits Are Limited Per Plan Terms)

6. In the event the Court finds benefits are payable, they are limited to those set forth under the terms of the benefit plan at issue.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

7. Defendants are informed and believe, and thereon allege, that the Complaint, and each cause of action asserted therein, is barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

8. Defendants are informed and believe, and thereon allege, that the Complaint, and each cause of action asserted therein, is barred by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

(Privileged Conduct)

9. Defendants allege that each and every act done or statement made by Defendants and/or their officers, employees, agents or insurers with reference to the matters at issue, were a good faith assertion of their rights and obligations, and therefore, were privileged or justified.

TENTH AFFIRMATIVE DEFENSE

(Good Faith Compliance with Applicable Laws)

10. Defendants substantially complied in good faith with any and all

1 applicable laws in their dealings with Plaintiff, and Defendants are entitled to each
2 and every defense afforded to them by equity and law.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 **(Accord and Satisfaction)**

5 11. To the extent Plaintiff's claim has been resolved, in whole or in part,
6 such claim must be barred by the doctrine of accord and satisfaction.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 **(Failure to Comply with Conditions Precedent)**

9 12. Defendants are informed and believe, and thereon allege, that
10 Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff failed to
11 comply with the conditions precedent under the benefit plan at issue.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 **(Contractual Defense)**

14 13. To the extent the terms and/or provisions of the benefit plan at issue,
15 and/or any agreement entered into between Defendants and Plaintiff or his agent,
16 provide contractual defenses not specifically set forth herein, Defendants reserve
17 the right to assert those terms and/or provisions as defenses at any time throughout
18 this proceeding and incorporate by reference any potentially applicable terms or
19 provisions into this response.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 **(Intervening and Superseding Cause)**

22 14. Defendants allege that if in fact Plaintiff was damaged in any manner
23 whatsoever, such damage, if any, was a direct and legal result of the intervening
24 and superseding actions on the part of other persons or entities, and not the actions
25 of Defendants. Defendants further allege that such intervening, superseding
26 actions of such other persons or entities bar recovery herein by Plaintiff against
27 Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE**(Contributory/Comparative Fault)**

15. Defendants are informed and believe, and upon such information and belief allege, that any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff and/or third parties and resulted from Plaintiff's or third parties' own wrongful acts which equaled or exceeded any alleged wrongdoing by Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE**(Acts or Omissions of Others)**

16. Defendants are informed and believe, and upon such information and belief allege, that Plaintiff's damages, if any, are the result of acts or omissions committed by person(s) or entities, other than Defendants, over whom Defendants had and have no responsibility or control.

SEVENTEENTH AFFIRMATIVE DEFENSE**(Failure to Mitigate)**

17. To the extent Plaintiff or his agents failed and neglected to use reasonable care to mitigate, minimize, or avoid the damages alleged, Defendants are entitled to have any sum to which Plaintiff would otherwise be entitled reduced by such sums as could have been mitigated, minimized, or avoided.

EIGHTEENTH AFFIRMATIVE DEFENSE**(Right to Assert Additional Defenses)**

18. Plaintiff fails to plead claims with sufficient particularity to permit Defendants to determine all applicable defenses. Defendants reserve the right to assert additional defenses as information is obtained through discovery and investigation.

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PRAYER FOR RELIEF

WHEREFORE, Defendants pray for judgement as follows:

1. That judgment be entered in favor of Defendants;
2. That Plaintiff be awarded nothing;
3. That Defendants be awarded costs and reasonable attorney fees from Plaintiff; and
4. For such other and further relief this Court may deem just and proper.

Dated: March 13, 2019

GORDON REES SCULLY
MANSUKHANI, LLP

By: /s/ Courtney C. Hill
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Sylvia Joo
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